IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 6th March, 2006

Second Appeal No. 85 of 2002

Shri Chandra Mohan Khurana
S/o Shri Uttam Chandra Khurana
R/o 115 Type-2, Sector-2
B.H.E.L., Ranipur Hardwar
District- Hardwar. ……Plaintiff/Appellant

Versus

Smt. Neeta Khuran
W/o Shri Chandra Mohan Khurana
D/o Shri Amarnath Khanna
R/o 60 Pan Dariba Charbagh
Lucknow.
……Defendant/Respondent

Shri B.P.S. Mer, learned counsel for the appellant.
Shri Rajeev Sharma, learned counsel for the respondent.

Learend Standing Counsel for the appellant
Shri M.C. Pande, learned counsel for the respondent.

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Hon. Mr. Justice Prafulla C. Pant)

Dated: 06.03.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Shri Rajeev Sharma, learned counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 100 of Code of Civil procedure, 1908, is directed against the judgment and decree dated 31.07.2002 passed by learned Additional District Judge/Ist F.T.C., Hardwar in Civil Appeal No. 74 of 1998, whereby he was confirmed the judgment and decree passed by the trial court in original suit No. 78 of 1991, between the parties. (The suit appears to have been decided prior to creation of Family Court at Hardwar).

2. Brief facts of the case, are that the appellant-Shri Chandra Mohan Khurana, instituted a suit under Section 13 of Hindu Marriage Act, 1955, for a decree of divorce against the respondent. The appellant got married to the respondent on 20.10.1988, Hardwar, according to Hindu rites. It is pleaded in the petition that after the

marriage, parties lived together till March 1989. According to the husband, he discharged his duties as a husband towards his wife but his wife used to quarrel with him and at times used to stay away in the night. It is alleged that her behavior with the appellant was not good and she used to commit cruelty against him. Since March, 1989, according to the appellant, his wife deserted him without any reasonable cause. On the basis of these allegations, the husband sought decree of divorce against the wife, on the grounds of cruelty and desertion.

3. The respondent contested divorce petition and filed the written statement. She has alleged that her husband and his relatives were not happy with the dowry received by them, as such they started treating the respondent with cruelty. It is further alleged by the respondent that her husband is a drunkard and used to come late in the night. It is also pleaded in the written statement that appellant used to beat the respondent. The appellant was posted in the State Bank of India, Ranipur, Hardwar and the respondent was working with Punjab National Bank, at Lucknow. Initially, she used to come to Hardwar to give company to her husband, each time for three months. But according to her, appellant did not respond well to the cooperation given be her. It is also stated in the written statement that out of the wedlock, twins were born on 21.08.1989 in Sahni Nursing Home, Lucknow. But none from the side of the husband including himself, came to see the respondent or his twin daughters. The husband wanted that the respondent should get constructed a house at Ghaziabad,

after taking loan. In June, 1990, again the respondent made efforts to stay with her husband but his behaviour did not change and since then now she lives with her parents at Lucknow.

4. Learned trial court on the basis of the pleadings, framed following issues:-

1. *Whether the respondent committed cruelty as against her husband? If so, Its effect?*
2. *Whether the respondent has deserted her husband since March, 1989, without any reasonable cause?*
3. *Whether the husband forced his wife to leave the matrimonial home?*
4. *Whether the respondent has reasonable apprehension to her life on staying with her husband due to his cruel behavior?*
5. *Whether the respondent is entitled to get all her properties back under Section 27 of the Hindu Marriage Act, 1955?*
6. *To what relief, if any the petitioner is entitled?*

5. After recording the evidence and hearing the parties, learned trial court decided all the issues in negative and dismissed the suit on 10.11.1998. Aggrieved by judgment and decree, passed by the trial court, a civil appeal No. 74 of 1998 was preferred by the husband before the lower appellate court. The same was also dismissed by the lower appellate court, after hearing the parties. Aggrieved by both the judgments and decree passed by the courts below, this appeal is preferred by the husband.

6. This appeal was admitted on following substantial question of law:-

> *Whether the courts below have erred in law by ignoring the conduct of the respondent and thereby giving benefit to her of her own fault and are the findings of the courts below perverse?*

7. I heard learned counsel for the parties and perused the entire evidence on record.

8. Learend counsel for the appellant, argued that the learned courts below, have erred in law in not appreciating the fact that the wife has not only treated her husband with cruelty but also deserted him without any reasonable cause. Though, it is a question of fact whether the cruelty is committed by the wife or that if she has deserted the husband, which cannot be looked into in Second Appeal. But this Court has gone into the question of fact also, to examine if there is any perversity in the impugned judgment and decree. Admittedly. Parties got married on 20.10.1988, at Hardwar, according to the Hindu rites. There is no dispute that twin girls were born out of the wedlock on 21.08.1989, at Lucknow. Perusal of the statement of P.W. 1- Shri Chandra Mohan Khurana, shows that he admits in his cross-examination that his wife used to come to him from Lucknow, after taking leave. He further admits that his wife even took medical leave to stay with him, at Hardwar. The most significant evidence on record is this that P.W. 1 – Shri Chandra Mohan Khurana, the husband (appellant), admits in

Cross-examination that the twins were born out of the wedlock at Lucknow, but he never went to see his daughters till the examination was recorded. It is pertinent to mention here the statement of P.W. 1 was recorded in February, 1996, which means that for seven years it was the husband, who never bothered to see his wife or his daughters at Lucknow. Unlike his wife, he admittedly never took leave to go to Lucknow. With this evidence, which has come out from the cross-examination of the P.W. 1- Shri Chandra Mohan Khurana, the back bone of his case of cruelty as well as that of desertion demolishes. On the other hand, D.W. 1- Smt. Neeta Khurana, the respondent h as stated that she even got herself transferred from Lucknow to Hardwar but could not join her duties there, as her husband insisted that she should get herself transferred to Ghaziabad, where he too would get transferred from Hardwar. D.W. 1-Smt. Neetu Khurana, has further stated that her husband used to take liquor and beat her. She has stated that she was forced to leave the matrimonial home at Hardwar. Lastly, in her cross-examination in chief, she says that she is still willing to live with her husband.

9. IN these facts and circumstances, as discussed above, I do not see any reason to disagree with the findings of the courts below that the respondent has not deserted the husband without any reasonable cause nor can it be said that she committed physical or mental cruelty against her husband. The conduct of the respondent, who took leave from her Bank to stay with her husband at Hardwar, dilutes the allegation of the

husband that it was she who used to treat him with cruelty. In the opinion of the court, wife's conduct was not such, which can be said to have led the courts below that she deserted her husband or committed any act of cruelty against him. The substantial question of law is accordingly answered in favor of the respondent.

10. For the reasons as discussed above, there appears no error of law or that of fact in the impugned judgments and decree, which requires interference of this Court. Accordingly, the appeal is liable to be dismissed. The appeal is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 6th March, 2006
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